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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 19

No. [redacted] 131

A. L. KORNMAN COMPANY,
PETITIONER,

VS.

AMALGAMATED CLOTHING WORKERS OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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SUBJECT INDEX

Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	3
Opinion of the District Court	8
Opinion of the United States Court of Appeals	9
Argument	11
Jurisdictional Question	11
The Procedural Question	17
Reasons Relied On for the Allowance of the Writ	19
Prayer	20
Statutory Appendix—	
National Labor Relations Act	A1

TABLE OF CASES

American Fire & Casualty Co. v. *Finn*, 341 U.S. 6, 17	10
American Federation of Musicians v. *Stein*, 213 F.2d 679	6
Association of Westinghouse Salaried Employees v. *Westinghouse Electric Corp.*, 348 U.S. 437	6, 12, 13
Badger v. *Reich Bros. Const. Co.*, 161 F.2d 289, 290	10
Fisch v. *General Motors Corp.*, 169 F.2d 266	10
General Electric Co. v. *Local 205, etc.*, 353 U.S. 547	9
Goodall-Sanford, Inc., v. *United Textile Workers et al.*, 353 U.S. 550	9
International Ladies Garment Union v. *The Jay-Ann Co., Inc.*, 228 F.2d 632	14
Local 19, Warehouse, Processing and Distributing Workers Union v. *The Buckeye Cotton Oil Co.*, 236 F.2d 776	9

Sartor v. *Arkansas Natural Gas Corp.*, 321 U.S. 620 18
Textile Workers Union of America v. *Cone Mills Corporation*, 166 F. Supp. 654 16
Textile Workers of America v. *Williamsport Textile Corp.*, 136 F. Supp. 407 14
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 ..... 9, 12, 13
Trust Co. of Chicago v. *Pennsylvania R. Co.*, 183 F.2d 640 10
United Electrical, Radio and Machine Workers of America et al. v. *General Electric Co.*, 231 F.2d 259 14
United States v. *First Fed. Savings & Loan Assn.*, 248 F.2d 804 10
United Steel Workers of America v. *Pullman Standard Car Mfg. Co.*, 241 F.2d 547 ..... 14, 15
Warner v. *First National Bank of Minneapolis*, 236 F.2d 853 18

STATUTES

Labor Management Relations Act, 1947 (61 Stat. 156, 29 U.S.C. 185) 6, A1

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This is a petition by A. L. Kornman for a writ of certiorari to review a judgment of the United States Court of Appeals for the Sixth Circuit rendered in the above entitled cause which affirmed the judgment of the United States District Court for the Middle District of Tennessee, Nashville Division, by a divided court, Circuit Judge Miller filing a dissenting opinion.

OPINIONS BELOW.

The Memorandum opinion, findings of fact, conclusions of law and judgment of the District Court appear in the record at pages 108a-117a. The action of the District Court and the opinion of the Court of Appeals are not yet reported and are contained in the certified copy of the printed record.

JURISDICTION.

The grounds on which the jurisdiction of this Court are invoked are as follows:

(i) The date of the judgment or decree sought to be reviewed and the time of its entry is February 25, 1959.

(ii) A petition for rehearing was seasonably filed by petitioner, was considered by the Court, and the same was denied by a divided Court by order entered on April 2, 1959.

(iii) The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by the writ of certiorari is 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED.

(1) The first question presented for review involves interpretations of the provision of the Labor Management Relations Act, 1947 (61 Stat. 156, 29 U.S.C. 185 (1947)). Specifically:

Does a Federal District Court have jurisdiction under Section 301 of the Taft-Hartley Act, to render a money

judgment in favor of the union upon an arbitration award; adjudging liability against the Petitioner for various sums of money due to individual employees as deferred wages for vacation pay where no employee's claim is greater than $140.00 and no diversity of citizenship exists between the employer and the employees for whose benefit judgment is sought?

(2) The second question presented is:

Where a genuine issue of fact exists as to the execution of a labor contract subject to a collateral agreement that certain financial provisions were not to become effective upon the happening of an event which subsequently occurred, was it proper for the District Judge to enter summary judgment upon an arbitration award enforcing the questioned provisions of the contract, prior to hearing the proof and resolving the issue of fact?

STATUTE INVOLVED.

The provisions of the statute involved (cited above) are lengthy and they are set forth in the Appendix.

STATEMENT OF THE CASE.

Amalgamated Clothing Workers of America (hereinafter called the Union) filed a civil action on December 14, 1955, in the United States District Court for the Middle District of Tennessee, Nashville Division, against the Petitioner, A. L. Kornman Company, demanding judgment in the sum of $10,104.63. This demand was based upon a decision and award dated March 7, 1955, made by an arbitrator appointed pursuant to provisions of a collective bargaining agreement between the Union and the Company (R. 4a-12a).

The award made by the arbitrator was filed as Exhibit VII to the Complaint and is as follows:

"AWARD.

"The Arbitrator makes the following award:

"Respondent is directed to pay to the Union the sum of $10,104.63 for payment of vacation pay to respondent's employees for the 1954 vacation period.

/s/ Walter Brower,
Arbitrator"

"Dated: March 7, 1955"

(R. 54a.)

The parties to this cause signed a collective bargaining agreement on February 19, 1954, to remain in full force and effect until 1957 (R. 12a-41a).

But prior to signing this agreement, the representatives for the Company told the representatives of the Union that the Company would be forced to discontinue operations and liquidate rather than operate under this new contract, as the financial burden that it would impose would render the Company non-competitive with the rest of the clothing industry. The Union representatives stated that the Union was willing to take the chance that the Company would continue to operate and the Union proposed that a supplemental agreement be signed that would eliminate all of the financial provisions of the contract if the Petitioner discontinued its business on or prior to May 1, 1954 (R. 100a).

The Company liquidated the business before May 1, 1954. Subsequently, the representatives of the Union made demand upon the Company for vacation pay alleged to be due under the contract to the employees of the Company for the vacation period in the summer of 1954. The

Company refused to pay the employees for such vacation period and insisted that such financial obligations, if any, never became effective because of the liquidation of the Company pursuant to the supplemental agreement (R. 41a-43a). Then the Union requested that the arbitrator named in the contract, Walter Brower, hold a hearing on this question. Such a hearing was held and the following question was submitted to the arbitrator:

> "Is the Company liable for vacation pay for the 1954 vacation period pursuant to the collective bargaining agreement between it and the Union dated February 19, 1954." (R. 45a).

The arbitrator made the award previously quoted concluding that the employees were entitled to the vacation pay. An audit of the Company payroll was made which showed that none of the employees was due more than $140.00 for vacation pay. The Company refused to pay the vacation pay in compliance with the arbitrator's award (R. 54a-55a).

Thereupon the Union instituted this suit in the District Court.

The Complaint averred three alternate grounds of Federal jurisdiction, as follows:

> "1. The jurisdiction of this court is based on Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, U.S.C., Title 29, Sec. 185.
>
> "2. The jurisdiction of this court is also based on the Act of July 30, 1947 (United States Arbitration Act); 61 Stat. 669, U.S.C., Title 9, Sec. 1 *et seq.*
>
> "3. The jurisdiction of this court is also based on diversity of citizenship in that plaintiff is an unincorporated association having its principal offices in the State of New York and defendant is a corporation in-

porated under the laws of the State of Tennessee. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000)."

(R. 4a-5a.)

Prior to filing an answer petitioner filed a motion to dismiss the complaint, the several grounds of the motion all being directed to the point that the District Court was without jurisdiction under Section 301 of the Labor Management Relations Act, U. S. C., Title 29, Section 185, and further that no diversity of citizenship existed between the real parties in interest as required by Rule 17a of the Rules of Civil Procedure.

(R. 55a-56a.)

The District Judge denied appellant's motion on May 2, 1956, on the basis of a memorandum (R. 57a-59a), holding in substance that the denied diversity of citizenship was a matter calling for proof under the decision in *American Federation of Musicians* v. *Stein*, 213 F.2d 679 (1954), and also that action with respect to jurisdiction under Section 301 of the Labor Management Relations Act as interpreted by the Supreme Court in *Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, could not be properly determined without the submission of proof, the District Judge saying:

"Insofar as Section 301 is concerned it would appear to the Court that it should not determine at this time whether the plaintiff's action in the instant case is analogous to an action for accrued wages within the meaning of the Westinghouse doctrine or whether it is one of which the Congress intended to confer jurisdiction. The character of the action can be better determined after the evidence in the case has been introduced."

(R. 59a.)

Thereafter, on July 20, 1956, petitioner filed its answer restating its objections to the Court's jurisdiction and raising certain additional issues of fact, which may be briefly summarized as follows:

1. Petitioner averred the contract pursuant to which the arbitration was held, and the award made and particularly the monetary provisions upon which the award was predicated, never became effective by reason of the fact that the contract was entered into by the parties subject to the condition that the contract "should not become effective as to wages, hours of work, payment of wages and checkoff, or insurance * * *" if appellant discontinued its manufacturing business on or prior to May 1, 1954, and the answer averred that this contingency occurred and hence no contract existed or was ever entered into between the parties with respect to the matters as to which the arbitration was demanded and the award was made.

(R. 63a-64a.)

2. No actual dispute existed between appellant and its employees at the time arbitration was demanded or at any other time with reference to the matters considered by the arbitrator, and no grievance, real or otherwise, had ever been presented to appellant for determination as provided in the contract.

(R. 65a.)

3. That the matters set out above were called to the attention of the arbitrator and that the hearing before the arbitrator was by agreement submitted with a complete reservation of appellant's rights under both its factual and legal contentions.

(R. 66a.)

4. That the law of Tennessee was controlling as to the validity of the contract between the parties and that

under such law the contract was void, illegal and unenforceable.

(R. 68a.)

On September 24, 1958, the Union filed a motion for summary judgment predicated upon the single ground that as a matter of law and irrespective of the foregoing defenses the Union was entitled to a judgment.

(R. 69a.)

The Union for purposes of the motion for Summary Judgment asserted jurisdiction solely under Section 301 of the Taft-Hartley Act.

This motion was accompanied by various affidavits with respect to the issues of fact set up in appellant's answer (R. 70a-102a), and in compliance with the rules, the foregoing issues of fact raised by the answer were supported by affidavit of Cecil Sims showing that such issues were genuine and competent evidence would be offered to establish the same if material.

(R. 104a-107a.)

OPINION OF THE DISTRICT COURT.

The Learned District Judge filed a written memorandum on December 17, 1957 (R. 108a-111a), stating in substance that the disputed issues of fact were not material, thus accepting the defendant's version of these facts as true for the purpose of the motion, holding that the court was required as a matter of law, even if such facts were established, to enter judgment in favor of the Union on its motion for a summary judgment by reason of certain recent decisions of the Sixth Circuit Court of Appeals and an opinion of the Supreme Court of the United States

subsequent to the Westinghouse case, such decisions being as follows:

Local 19, Warehouse, Processing and Distributing Workers Union, etc., v. The Buckeye Cotton Oil Co., 236 F.2d 776.

Textile Workers Union v. Lincoln Mills, 353 U.S. 448.

Goodall-Sanford, Inc., v. United Textile Workers et al., 353 U.S. 550.

General Electric Co. v. Local 205, Electrical, Radio Machine Workers of America, 353 U.S. 547.

(R. 108a.)

OPINION OF THE UNITED STATES COURT OF APPEALS.

The Court of Appeals for the Sixth Circuit in a divided decision, speaking through Judge Martin rested its affirmance on the position that if the Federal Courts have jurisdiction to order the parties to a collective bargaining agreement to go to arbitration under the *Lincoln Mills* decision, they also have jurisdiction to enforce the awards.

Judge Martin said in the majority opinion:

> "If the United States District Courts have jurisdiction and may order compliance with the grievance arbitration provisions of a collective bargaining agreement, they must necessarily have jurisdiction to enforce the resulting awards. To hold otherwise would render the entire arbitration machinery merely time-consuming and useless. Authority to compel arbitration carries with it authority to enforce the resultant award."

Judge Miller dissented on the ground that the language of Section 301 of the Taft-Hartley Act did not confer such jurisdiction on the Federal Courts. He said:

"The majority opinion gives the District Court additional jurisdiction which is not provided for by the words of the statute. It may be, as stated in the majority opinion, that if the District Court has jurisdiction to compel arbitration, it is advisable that it also have jurisdiction to enforce the resulting arbitration award. It seems to me there are two answers to that contention.

"First, the available jurisdiction under Sec. 301 (a) was not invoked or used in this case to obtain the arbitration and the resulting award. The enforcement of the award is not a follow-up or continuing exercise of a jurisdiction previously acquired. It is a new and independent action.

"Second, regardless of how advisable it may be, the statute does not provide it. The jurisdiction of federal district courts is limited and defined strictly by statute. *United States* v. *First Federal Savings and Loan Association*, 248 F.2d 804, 808, C.A. 7th; *Fisch* v. *General Motors Corp.*, 169 F.2d 266, 272, C.A. 6th, cert. denied 335 U.S. 902. It is limited to that which is either expressly or by necessary implication conferred on them by the statute granting such jurisdiction. *Trust Co. of Chicago* v. *Pennsylvania R. Co.*, 183 F.2d 640, 642, C.A. 7th; *Badger* v. *Reich Bros. Const. Co.*, 161 F.2d 289, 290, C.A. 5th, affirmed 333 U.S. 163, rehearing denied 333 U.S. 878. It is carefully guarded against expansion by judicial interpretation. *American Fire & Casualty Co.* v. *Finn*, 341 U.S. 6, 17. If the jurisdiction should be enlarged, Congress can easily do so."

ARGUMENT.

Jurisdictional Question.

The purpose of this suit is to enforce in a Federal court the *uniquely personal right* of various employees for whom the Union bargained to receive deferred wages as vacation pay based upon previous services rendered by such individual employees, the amounts payable being determined by the length of service of such individual employees as applied to previous wages.

As stated by the arbitrator, the Union's position in the arbitration, and in the present suit to enforce the award, is:

> "1. That vacation pay is wages, payment of which is deferred until the vacation period." (R. 49a).

The award rendered by the arbitrator was not in favor of the Union, *in its own right*, but solely for distribution of the amounts found to be due to the respective individual employees. This appears from the award itself, which was as follows:

> "AWARD
>
> "The Arbitrator makes the following award:
>
> "Respondent is directed to pay to the Union the sum of $10,104.63 for payment of vacation pay to respondent's employees for the 1954 vacation period.
>
> /s/ Walter Brower,
> Arbitrator
>
> "Dated: March 7th, 1955."
>
> (R. 54a.)

Petitioner contends that this case is controlled by the decision of this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U.S. 437, rather than by the later decision of the Court in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448.

In the *Westinghouse* decision this Court held that Section 301 of the Labor Management Relations Act of 1947, conferred no jurisdiction on the Federal Courts where an action was brought by a labor union on behalf of employees for accrued wages which the employer refused to pay, allegedly in violation of a collective bargaining agreement between the union and the employer.

Six members of the Court held that Section 301 did not confer jurisdiction over such a suit in the Federal courts.

Mr. Justice Frankfurter concluded his opinion, and supported his reasoning, with the following statement:

> "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages.
>
> Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one." 348 U.S. 461.

Mr. Chief Justice Warren and Mr. Justice Clark joined in the following opinion:

> "We agree with the decision but not with all that is said in the opinion. The only question we see here is one of statutory interpretation. For us the language of paragraph 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in

federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer. Thus viewed, it becomes unnecessary for us either to make labor policy or to raise constitutional issues."

348 U.S. 461.

While Mr. Justice Reed rendered a lengthy concurring opinion, the following quotation summarizes his views:

"The reason, I think, that this union cannot recover from the employer in this suit under paragraph 301 is that the claim for wages for the employees arises from separate hiring contracts between the employer and each employee. The union does not undertake to do work for the employer or even to furnish workers. The duty, if any there be, to pay wages to an employee arises from the individual contract between the employer and employee, not from the collective bargaining agreement. Therefore there is set out no violation of a contract between an employer and a labor organization as is required to confer jurisdiction under Section 301. The facts show an alleged violation of a contract between an employer and an employee—a situation that is not covered by the statute."

Association v. *Westinghouse Electric Corp.*, 348 U.S. 460, 464.

The interpretation of Section 301 of the Act by the Supreme Court in the *Westinghouse* case was not modified or affected by the subsequent decision in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448.

This appears clearly from the Court's majority opinion in the *Lincoln Mills case*, stated by Mr. Justice Douglas (in a footnote), as follows:

"6. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437,

99 L. Ed. 510, 75 S. Ct. 488, is quite a different case. There the Union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the Union to sue and recover on those individual employment contracts. The question here concerns the right of the Union to enforce the agreement to arbitrate which it has made with the employer." (page 456).

Justice Burton, with whom Justice Harlan joined, in a concurring opinion said:

"The District Court had jurisdiction over the action since it involved an obligation running to a union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a union." (page 460).

The distinction between a suit filed by a union to enforce its rights, and one filed to enforce uniquely personal rights of individual employees arising from the provisions of a contract negotiated by the union, as made in the Westinghouse decision, has been accepted and widely enforced by the lower Federal tribunals.

International Ladies Garment Union v. *The Jay-Ann Co., Inc.*, 228 F.2d 632.

United Electrical, Radio and Machine Workers of America et al. v. *General Electric Co.*, 231 F.2d 259.

United Steel Workers of America et al. v. *Pullman Standard Car Manufacturing Co.*, 241 F.2d 547.

Textile Workers of America v. *Williamsport Textile Corp.*, 136 F. Supp. 407.

As stated in the *United Steel Workers of America* v. *Pullman Standard Car Mfg. Co.*, 241 F.2d 547:

"The Westinghouse decision necessarily teaches that a controversy about wage claims, even when predicated upon the disputed construction of a collective bargaining agreement, is beyond the power which Section 301 confers upon the Federal Courts." (page 549).

The Union is not seeking to enforce the performance of an arbitration agreement in the present case, *but a money judgment for the benefit of individual employees for deferred wages due as vacation pay.*

The significant difference between the right of an individual employee and the rights accruing to a union, both arising from a collective bargaining agreement, was clearly stated in the foregoing opinion of *United Steel Workers of America* v. *Pullman Standard Car Mfg. Co., supra,* where the Court said:

"A different distinction, consistent with what the Chief Justice said, is suggested by a number of cases decided by the inferior Federal Courts since *Westinghouse.* A collective bargaining agreement is a complex of undertakings. The interest of the union and any given promise of the employer and the impact of any breach of that promise upon the union as an organization may be significantly different from the interest of and impact upon the employees as individuals. Certain undertakings of the employer are important because of their direct and primary effect upon the union as an organization. Undertakings to maintain a union shop and to check off union dues are typical of this category. Breaches of such undertakings so primarily concern the union that it may meaningfully be said that the resulting claims are not 'uniquely personal' to the employees. It is not surprising, therefore, that both before and after Westinghouse, inferior courts have allowed unions to sue on such claims under Section 301. *Burlesque Artist Ass'n*

v. *I. Hirst Enterprises*, D.C. E.D. Pa. 1955, 134 F. Supp. S.D. N.Y. 1950, 11 F.R.D. 147: *United Steel Workers* v. *Shakespeare Co.*, D.C. W.D. Mich. 1949, 84 F. Supp. 267." (page 55).

The majority opinion of the Sixth Circuit in this case seems to rest its decision entirely on the Court's view of what the best legislative policy would be for the future. It would be difficult to point out the errors of the majority opinion any more clearly than the dissent does. The dissent points out that this is not a case where arbitration had previously been ordered by a Court and so there could not be a retention of jurisdiction once acquired. Nor did Judge Miller feel that the situation was hopeless if the Federal Courts did not have jurisdiction in such a case. Congress *could* grant such jurisdiction if it should decide that it was desirable.

Petitioner does not quarrel with the standing of the union to enforce arbitration awards made to the Union where the award directs the fulfillment of an obligation running to the union as an entity. But here the award directs the fulfillment of an obligation running to the employees and this obligation of the employer is uniquely personal to the employees.

In *Textile Workers Union of America* v. *Cone Mills Corporation*, 166 F. Supp. 654 (1958) (a case identical in its fact situation with the case at bar), the District Court denied jurisdiction, saying:

> "By whatever name called, the benefits sought move directly to the employees, and any benefit to the union is the indirect benefit of seeing that employees are made whole for their individual loss of compensation. Thus, it is abundantly clear that the real parties in interest in this action are the employees of the defendant, and not the plaintiff who is their agent.

The award which the plaintiff seeks to enforce in this action, is for personal benefits due the individual employees." (pp. 657 and 658).

"The union is not seeking to enforce the performance of an agreement to submit an unresolvable grievance to arbitration, but is seeking the equivalent of a money judgment in behalf of named individual employees for wages due in the form of vacation payments or unemployment benefits. The fact that the union brings the suit in behalf of the employees does not make the rights any less personal than in the Westinghouse case. The individual employees are not parties to the litigation, and the union does not claim any monetary benefits from the award." (p. 660).

The Procedural Question.

Wholly aside from the basic question of federal jurisdiction, Petitioner asserts that the Court erred in sustaining the Union's motion for a summary judgment because a genuine issue of fact exists as to the execution of the labor contract as set out in the affidavit of Cecil Sims, 104a-107a. From this affidavit the appeal must be viewed by this Court as if Petitioner had established the fact (though it is controverted) that a collateral agreement was entered into by the parties at the time the collective bargaining contract was executed providing that all of the financial provisions of the contract would be eliminated from the agreement and would be without binding effect between the parties if Petitioner discontinued its business on or prior to May 1, 1954. The counter-affidavit of Cecil Sims expressly states:

"* * * With this understanding and agreement, freely made and perfectly well understood, between the parties, the defendant, in order to avoid the disaster of a threatened strike, which would prevent an orderly liquidation of the business, executed the original con-

tract and simultaneously the plaintiff prepared, executed and delivered to the defendant the amendment to the agreement bearing date of February 4, 1954 (Exhibit F to plaintiff's motion), upon the plaintiff's assurance that if a bona fide liquidation took place the contract provisions which it now seeks to enforce would be null and void. The defendant immediately called a special meeting of its stockholders and directors and they voted unanimously to liquidate the business and did so prior to May 1, 1954. All of these facts will be shown by competent evidence at the hearing. It will be further shown that the effort of this plaintiff to recover in its own right vacation pay accruing to individual employees is nothing more nor less than an attempt by the Union to salvage some financial benefit out of its blind and inconsiderate demand which both destroyed the defendant's business and deprived all of its members of an opportunity to earn a livelihood."

(R. 105a.)

In *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, this Court said:

> "* * * Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law where it is quite clear what the truth is, that no genuine issue remains for trial, and the purpose of this rule is not to cut litigants off from their right of trial if they really have issues to try."

In a recent decision the Court of Appeals for the Eighth Circuit stated this rule in clear language in *Warner v. First National Bank of Minneapolis*, 236 F.2d 853. We quote from page 857:

> "The trial court has correctly stated that the motion for summary judgment is an extreme remedy and should be granted only in the absence of a genuine, material fact issue. The burden of demonstrating the

non-existence of any genuine fact issue is upon the moving party, and all doubts shall be resolved against him."

If the parties in fact made a collateral agreement providing that financial obligations were eliminated from the contract if petitioner liquidated its business prior to May 1, 1954 (and it is undisputed that this occurred), then obviously the proceedings before the arbitrator, and his purported award, which related only to these provisions of the contract, were completely null and void and vested no enforceable rights either in the Union or petitioner's former employees. Petitioner therefore contends, wholly aside from the legal question of jurisdiction, the Court erred in sustaining the motion of the Union and granting it the summary judgment.

The Court of Appeals did not discuss this question in its opinion.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

It would seem incontrovertible that the present case presents a situation under which the writ should be granted under Rule 19, for the following reasons:

(1) In the present case the learned Court of Appeals for the Sixth Circuit by a divided court has decided an important question of Federal law which has not been, but should be, settled by this Court.

(2) In the present case the learned Court of Appeals for the Sixth Circuit has decided an important Federal question which has affirmed and sanctioned a departure from the usual course of judicial proceeding by a lower court so as to call for an exercise of this Court's power of supervision.

PRAYER.

Wherefore, your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals numbered and entitled on its docket No. 13523, A. L. Kornman Company, Appellants, v. Amalgamated Clothing Workers of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated this ..... day of June, 1959.

CECIL SIMS,
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STATUTORY APPENDIX.

National Labor Relations Act.

TITLE III.

SUITS BY AND AGAINST LABOR ORGANIZATIONS.

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the Courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the District Courts of the United States, District Courts shall be deemed to have jurisdiction of a labor organization (1) in the District in which such organization maintains its principal office, or

(2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(3) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 131

A. L. KORNMAN COMPANY,

Petitioner,

v.

AMALGAMATED CLOTHING WORKERS OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement	3
Argument	7
A. Jurisdictional Question	7
B. Procedural Question	12
Conclusion	13
Appendix	15

CITATIONS

Cases:

Association of Westinghouse Salaried Employees v. *Westinghouse Elec. Corp.*, 348 U. S. 437	7, 8
Burchell v. *Marsh*, 17 How. 344 (1855)	12n
Enterprise Wheel & Car Corp. v. *United Steelworkers of America*, — F. 2d — [44 LRRM 2349] (4th Cir., June 16, 1959)	10
General Electric Co. v. *Local 205, United Electrical Workers*, 353 U. S. 547	5, 6, 9

Page

Goodall-Sanford, Inc. v. *United Textile Workers*, 353 U. S. 550 ..... 5, 9

Local 205, United Electrical Workers, U. E. v. *General Electric Co.*, 233 F. 2d at 85, 89 ..... 9n

Textile Workers v. *Lincoln Mills*, 353 U. S. 448 ..... 5, 7, 7n, 8, 8n, 9, 9n

Textile Workers Union v. *Cone Mills*, — F. 2d — [44 LRRM 2345] (4th Cir., June 16, 1959) 10, 11

Statutes:

Federal Rules of Civ. Pro., rule 56, 28 U. S. C. A. 2, 3, 15

Labor-Management Relations Act, 1947, Section 301, 61 Stat. 156, 29 U. S. C. §185 (1952) 2, 3, 7, 8, 9, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 131

A. L. KORNMAN COMPANY,

Petitioner,

v.

AMALGAMATED CLOTHING WORKERS OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

This is a brief by respondent, the Amalgamated Clothing Workers of America, hereinafter referred to as "Amalgamated", in opposition to the petition of A. L. Kornman Company, hereinafter referred to as "Kornman", for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on February 25th, 1959.

Opinions Below

The opinion of the United States District Court for the Middle District of Tennessee, Nashville Division, affirmed by the United States Court of Appeals for the Sixth Circuit, is printed in the record at pages 108a-

111a. The opinion of the District Court is not yet reported. The opinion of the Court of Appeals and the dissenting opinion are reported in 264 F. 2d 733, and are contained in the printed record.

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition. (Pet., p. 2).

Questions Presented

1. Does a suit to enforce an arbitration award rendered in favor of a labor organization pursuant to the provisions of a contract between an employer and such labor organization, constitute a suit for violation of a contract within the meaning of Section 301 of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185 (1952), and, therefore, within the jurisdiction of a district court of the United States.

2. Does the contention of a party to a labor-management contract claiming the termination of certain provisions thereunder, which contention has been presented to an arbitrator under the terms of such contract and rejected, raise a genuine issue as to a material fact for disposition by a district court and, therefore, preclude, as a matter of law, summary judgment in accordance with the Federal Rules of Civil Procedure, rule 56, 28 U. S. C. A.

Statute Involved

The statutory provisions involved are set forth in Section 304 of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185 (1952), which section is printed in its entirety as an appendix to the Petition for Certiorari (Pet., A-1-A2). The rule of civil procedure involved, Rule 56, Federal Rules of Civil Procedure, is set forth as Appendix A hereto.

Statement

The statement of the case contained in the Petition for Certiorari (Pet., pp. 3-8) omits certain relevant facts and, in certain material respects, fails to summarize adequately the holdings of the courts below. Accordingly, in order that this Court may have before it an adequate statement the following is submitted.

Kornman, at all times mentioned herein, was engaged in Nashville, Tennessee, in the manufacture of men's clothing, and their sale and delivery throughout the United States (R. 113a).[1] The Amalgamated, a labor organization, representing employees in the men's clothing industry, initiated an organizational campaign among Kornman's employees in the latter part of 1953. Following a secret ballot election conducted by the National Labor Relations Board, the Amalgamated was certified as the collective bargaining agent of Kornman's employees (R. 113a). Thereafter, in February, 1954, Amalgamated and Kornman

[1] Record references are to the printed record certified to the Court.

entered into a contract governing wages, hours and conditions of employment (R. 12a-41a). This was concededly a contract under the terms of Section 301(a).

In lieu of "stoppages and lockouts", which were prohibited during the term of the contract, the contract provided for arbitration of any "complaint, grievance or dispute arising under, out of or relating directly or indirectly to the provisions" of the contract (R. 26a-29a). Arbitration was agreed upon as the exclusive procedure for settling all disputes and "the decision, order, direction or award of the arbitrator was to be final, conclusive and binding and enforceable in a court of competent jurisdiction" (R. 27a-28a).

In April, 1954, Kornman laid off its employees and, thereafter, in the summer of 1954, a dispute arose between the Amalgamated and Kornman regarding the payment of vacation pay under the terms of the contract (R. 9a, 17a-20a). The dispute was submitted to the arbitrator named in the contract. The question submitted to the arbitrator was formulated by counsel for Kornman and counsel for the Amalgamated as follows (R. 45):

> "Is the Company liable for vacation pay for the 1954 vacation period pursuant to the collective bargaining agreement between it and the Union dated February 19, 1954."

In March, 1955, the arbitrator issued a decision and award, finding that Kornman was duly required to pay to the Amalgamated the sum of $10,104.63 "for payment of vacation pay to [Kornman's] employees

for the 1954 vacation period" (R. 45a-54a). Kornman refused to abide by the award (R. 12a, 66a-67a).

Amalgamated thereupon instituted the instant suit invoking the jurisdiction of the District Court on, among other grounds, Section 301 (R. 3a-12a). Kornman moved to dismiss, primarily on the ground that the District Court was without jurisdiction under Section 301 (R. 55a-56a). This motion was denied with an accompanying memorandum opinion in May, 1956 (R. 57a-59a, 60a). The court, reserving questions as to jurisdiction until the hearing, granted leave to Kornman to rely upon all of the stated objections to jurisdiction in its answer.

Thereafter, Kornman filed its answer restating its objections to the jurisdiction of the District Court (R. 61a-68a) and contending that the obligation to make vacation payments to the employees was terminated by a supplemental letter agreement dated February 5th, 1954 (R. 63a-64a). The Amalgamated thereupon filed its motion for summary judgment (R. 69a).

In December, 1957, the District Court, upon the authority of this Court's then recently issued decisions in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, *Goodall-Sanford, Inc.* v. *United Textile Workers*, 353 U. S. 550, and *General Electric Co.* v. *Local 205, United Electrical Workers*, 353 U. S. 547, held (R. 109a):

> "The clear purport of these decisions [*Lincoln Mills*, etc.] is that an action by a labor union to enforce the arbitration provisions of a collective bargaining agreement is one of which the District Courts have jurisdiction notwithstanding the Westinghouse case. In that case the contract

> did not contain an arbitration provision and the Court regarded the right to enforce the claims for wages as uniquely personal to the employees. However, the agreement to arbitrate grievances is generally made in return for the Union's agreement not to call a strike, and there is sound reason for regarding it as a collective right even though the subject matter of a particular grievance may be largely personal to a particular employee or group of employees. The right and duty to arbitrate derive from the collective agreement and are enforceable by the Union itself in its own name and right."

The District Court concluded that it had "jurisdiction of the [Amalgamated's] action under Section 301 . . . to enforce the arbitration award in its favor" (R. 108a-109a), and that, since "no genuine or material issue of fact [was] involved", Amalgamated "was entitled to judgment" (R. 111a).

Thereafter, the Court of Appeals, affirmed the judgment of the District Court, Judge Miller dissenting. The majority concluded:

> "If the United States District Courts have jurisdiction and may order compliance with the grievance arbitration provisions of a collective bargaining agreement, they must necessarily have jurisdiction to enforce the resulting awards. To hold otherwise would render the entire arbitration machinery merely time-consuming and useless. Authority to compel arbitration carries with it authority to enforce the resulting award[2]."

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[2] 264 F. 2d at 737.

ARGUMENT

A.

Jurisdictional Question

Respondent submits that the court below properly delineated district court jurisdiction under Section 301 in accordance with this Court's decisions in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U. S. 437, and *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, and the companion cases cited above at page 5. The foregoing decisions are all of the decisions of this Court interpreting Section 301.

Petitioner, contending that this case is controlled by *Westinghouse*, argues that enforcement of the award granted in favor of the Amalgamated by a suit under Section 301 is prohibited (Pet., p. 12). Petitioner urged in the Court of Appeals "that the sole means of redress is for each employee to institute a separate action in a state court for his or her portion of the award[3]".

Westinghouse is "quite a different case[4]" from the instant case and as inapposite as it was concluded to be to *Lincoln Mills*. In *Westinghouse* the contract, unlike the contract in *Lincoln Mills* and the contract in the instant case, did not require arbitration, but permitted the union to call a strike over unresolved grievances. In *Westinghouse*, therefore, the alterna-

[3] *Ibid.*

[4] *Lincoln Mills*, 353 U. S. at 456, n. 6.

tives did not include arbitration. The union chose to sue at law rather than strike to recover the disputed unpaid wages on behalf of the employees. "The basic question concerned the standing of the union to sue and recover on [the] individual employment contracts[5]"; the rights sought to be enforced were, in the view of all 3 concurring opinions in *Westinghouse*, individual rights. But, here, as in *Lincoln Mills*, the question "concerns the right of the union to enforce the agreement to arbitrate which it has made with the employer[6]". The obligation which the Amalgamated seeks to enforce is a direct obligation to the Amalgamated, in exchange for which it has given up its right to strike.

Further, in this case, as in *Lincoln Mills*, not only did the contract require arbitration as the terminal step in the grievance procedure, but in essentially the same terms as the contract clause in *Lincoln Mills* it provided that the award of the arbitrator "shall be . . . enforceable in a court of competent jurisdiction" (R. 27a).

That *Lincoln Mills* involved a union suit to compel an employer to proceed to arbitration whereas the instant case involves a union suit to compel an employer to comply with an arbitration award rendered in favor of the union does not differentiate the "suits" in terms of the applicability of Section 301. The essential fact is that both suits are based on obligations to the union *qua* union under an agreement to arbitrate. In terms of Section 301 it is irrelevant

[5] *Ibid.*

[6] *Id.*

which phase of the agreement to arbitrate is in issue—the first or last phase in point of time.

Nor are *Lincoln Mills* and its companion cases, as petitioner urges (Pet. p. 15), differentiated from the instant case on the ground that the award here in behalf of the Amalgamated ultimately rebounds to the benefit of certain employees by payment to them of specific vacation payments. In *Lincoln Mills*, as in the related cases, *General Electric* and *Goodall-Sanford*, the arbitration proceedings directed to be conducted by the unions, involved enforcement of contract provisions to the ultimate benefit of individual employees. In *Lincoln Mills* the question was whether the work loads and work assignments of 10 individuals were in accordance with the contract.[7] In the *General Electric* case the questions to be arbitrated were whether one individual employee was being paid at the proper rate provided under the agreement and whether a second individual had been wrongfully dismissed.[8] In *Goodall-Sanford* the question was of the precise character here involved, whether employees permanently laid off as a result of a plant closing are nevertheless entitled to holiday pay and group insurance and pension rights.[9]

In sum, whatever the genesis of the grievance, its assertion under the arbitration provisions of a collective agreement constitutes a suit within the meaning of Section 301. The obligation to arbitrate and the obligation to abide by the result of an arbitration

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[7] 353 U. S. at 449.

[8] See opinion of Court of Appeals in *Local 205, United Electrical Workers, U. E. v. General Electric Co.*, 233 F. 2d at 85, 89.

[9] 353 U. S. at 551.

are collective obligations running to the union in its capacity as the union and not obligations running to the individual employees. If an individual were to bring an action to enforce such an obligation, he would be litigating the propriety of an arbitration between Kornman and the Amalgamated, the validity of an arbitration award to Amalgamated.

There have been two other circuit court cases involving suits under Section 301 for the enforcement of an agreement to abide by an arbitration award. These are:

> *Textile Workers Union* v. *Cone Mills*, — F. 2d — [44 LRRM 2345] (4th Cir., June 16, 1959);
>
> *Enterprise Wheel & Car Corp.* v. *United Steelworkers of America*, — F. 2d — [44 LRRM 2349] (4th Cir., June 16, 1959).

Both cases, as noted by the Fourth Circuit, were decided in accordance with the decision here. To date there have been no other court decisions presenting the question here in issue.

In sum, a refusal to perform an agreement to arbitrate by refusing to arbitrate and a refusal to perform an agreement to arbitrate by refusing to abide by an award are, in terms of Section 301, suits. As concluded in *Textile Mills* v. *Cone Mills Corp.*, *supra* (44 LRRM at 2348-2349):

> "The purpose of Congress to give effect to employer-union contracts and to afford full relief for breaches of those contracts would be frustrated if the courts should decree specific performance

to agreements to arbitrate but deny enforcement to arbitration awards which the parties have agreed in advance to accept. In both cases the right of action is based in the last resort on breach of contract between the parties. (Williston on Contracts, Vol. 6 Sec. 1927) so that jurisdiction comes within the literal terms of the statute; and relief in the form of specific performance is as appropriate and as necessary in one case as the other to effectuate the Congressional will. Under the Lincoln decision we are no longer inhibited by the old rule that the courts will not give specific performance to agreements to arbitrate. By parity of reasoning the court should enforce arbitration awards, for this is but a short step in the development of a substantive federal law to meet the problems as they arise in this area. If arbitration can be specifically enforced, the court should have power to afford complete relief by enforcing the award."

The decision of the court below is in accord with the Statute and its underlying policy. It is in accord with the decisions of this Court. It is in accord with all existing circuit court decisions. The question denominated "Jurisdictional Question" in the Petition for Certiorari does not afford a basis for the grant of certiorari.

B.

Procedural Question

Petitioner submits as a second basis for the grant of certiorari a so called "procedural question" (Pet., p. 17). Petitioner contends that summary judgment should not have issued here because there was a genuine issue of a material fact regarding the supplemental agreement purportedly negating the vacation provisions of the collective bargaining agreement.

As succinctly concluded by the District Court in its opinion (R. 110a):

> "The legal question as to whether the supplemental letter agreement of February 5, 1954, terminated the rights of employees under the previous contract if the company liquidated prior to May 1, 1954, was fully presented to the arbitrator and was determined by him adversely to the contentions of the defendant. The issue cannot be redetermined by this Court. *Wilko* v. *Swan*, 346 U. S. 427, 436[10]."

To the same effect, the Court of Appeals concluded:

> "Questions raised by the company as to whether or not the employees' rights to vacation pay were terminated if the company liquidated prior to May 1, 1954 were fully presented to the arbitrator and resolved by him adversely to the company[11]."

[10] See also *Burchell* v. *Marsh*, 17 How. 344, 349 (1855), where more than a century ago this Court set forth the narrow grounds on which a court may overturn an arbitrator's award.

[11] 264 F. 2d at 735.

But, in any event, the "procedural question" is, as the petition demonstrates, an extremely narrow one, the significance of which is limited to the case at bar. It obviously presents no question of importance warranting review by this Court on certiorari.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX.

Federal Rules of Civil Procedure, rule 56, 28 U. S. C. A.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

* * *

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

* * *